

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Clinton D. Proctor,)
Plaintiff,) C/A No. 3:18-1326-MBS-SVH
vs.)
Nancy A. Berryhill, Acting Commissioner)
of Social Security Administration,)
Defendant.)

)

ORDER

Plaintiff Clinton D. Proctor filed the within action on May 15, 2018, seeking judicial review of a final decision of Defendant Acting Commissioner of Social Security Administration denying Plaintiff's claim for a period of disability, disability insurance benefits, and supplemental security income disability benefits.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Shiva V. Hodges for pretrial handling. On September 19, 2018, Defendant filed a motion to dismiss, contending that Plaintiff's complaint was untimely filed because it was filed more than sixty days after Plaintiff's receipt of the letter from the Appeals Council denying his request for review. Plaintiff filed a response in opposition on October 2, 2018, asking that the filing deadline be equitably tolled because counsel was not admitted to practice in federal court at the time she and Plaintiff received the Appeals Council's final decision, and that she had sought an extension from the Appeals Council pending approval of her application for admission.

On December 14, 2018, the Magistrate Judge issued a Report and Recommendation in which she found that Plaintiff had diligently pursued his rights, and that the filing deadline should be

equitably tolled. On December 26, 2018, Defendant filed a notice of not filing objections to the Report and Recommendation. The notice was amended February 4, 2019, to clarify Defendant's position.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. Defendant's motion to dismiss (ECF No. 8) is **denied**. The matter is recommitted to the Magistrate Judge for further pretrial handling.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina
February 7, 2019